IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 18TH JANUARY 2007 / 28TH PAUSHA 1928

Crl.MC.No. 778 of 2006()

CRRP.15/2002 of ADDL. SESSIONS COURT (ADHOC), KALPETTA
MC.36/1998 of CHIEF JUDICIAL MAGISTRATE, KALPETTA

.....

PETITIONER: REVISION PETITIONER/COUNTER PETITIONER.

V.BAPPUTTY @ MUHAMMED,
S/O.ABDULLA, KUNNAMANGALAM VAYAL, KALPETTA
AMSOM DESOM, VYTHIRI TALUK, WAYANAD.

BY ADV. SRI.GRASHIOUS KURIAKOSE
SRI.K.C.SANTHOSHKUMAR

RESPONDENTS: PETITIONER.

---

1. SHAHIDA, D/O.MUHAMMED,
MUNDODAN VEEDU, CHULUKKA ESTATE, MEPPADI POST,
KOTTAPPADI.

2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB
SRI.P.K.RAMKUMAR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 18/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.778 of 2006

Dated this the 18th day of January, 2007

ORDER

Is a wife who has got remarried and who has received reasonable and fair provision and maintenance from her former husband entitled to claim reasonable and fair provision and maintenance again under Section 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986 (hereinafter referred to as the `Act') from the next husband who remarries and divorces her ? This is the question that is raised for consideration in this Crl.M.C.

2. On fundamental facts, there is no dispute. The marriage was the third marriage of the woman and the second marriage of the man. No children were born in the wedlock. Marriage took place on 30.6.96. Divorce took place on 06.06.1998. About the reasons of the divorce also, there is no serious disputes raised now. The husband was tested H.I.V positive. The relatives of the wife in these circumstances got her away from the husband. She also later tested H.I.V positive. There is, of course, a dispute attempted to be raised now as to whether the husband got it from the wife or the wife got it from the husband. Be that as it may, the wife after divorce claimed amounts under Section 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986. The learned Magistrate on the evidence

available came to the conclusion that the wife is entitled to an amount of Rs.3,000/- [Rs.1,000/- X 3] as maintenance during the period of Iddat and an amount of Rs.35,000/- as fair and reasonable provision. The court of revision took the view that the wife is entitled only for an amount of Rs.30,000/- as fair and reasonable provision under Section 3 of the Act. Accordingly the revisional court directed payment of an amount of Rs.33,000/- to the divorced wife.

3. The learned counsel for the petitioner contends that the wife, who had earlier married twice and who had obtained an amount of Rs.30,000/- from the first husband and who had not claimed any amount from the second husband, is not entitled to claim any further amount from the third husband, ie. the petitioner herein. This in short is the contention raised. Of course, a contention is further raised that the quantum awarded is excessive.

4. The counsel advances a contention that conceptually the amount payable under Section 3 (a) of the Muslim Women (Protection of Rights on Divorce) Act, 1986, is the maintenance amount which is due to her till the end of her life or till her remarriage. Such payments having been received by her already from her first husband and she having not claimed any such amounts from her second husband, she is not entitled to claim any amounts from the petitioner, it is contended.

5. A reading of Section 3(1) (a) of the Act does in these circumstances appear to be very relevant. It reads as follows:

> "Section 3. **Mahr or other properties of Muslim woman to be given to her at the time of divorce** -
> (1): Notwithstanding anything contained in any other law for the time being in force, a divorced woman shall be entitled to:
> (a): A reasonable and fair provision and maintenance to be made and paid to her within the iddat period by her former husband."

6. It may be apposite to look into the circumstances under which this piece of legislation was brought in. All other divorced women are entitled for maintenance under Section 125 Cr.P.C till the end of their lives or till they are remarried. After the decision in **Mohd. Ahmed Khan v. Shah Bano Begum & Ors.** [(1985) 2 S.C.C 556], there was a hue and cry about making this provision applicable to the Muslim divorced wives and husbands. The Act was brought in by Parliament in 1986 in the wake of those controversies. At least conceptually, the Act protects the better or superior rights which the Muslim women are assumed to have under their personal laws. Certainly the Act was not enacted with any purported intention of taking away the rights which muslim women already had. She is entitled to a lumpsum one time payment which will be a substitute for the payment of maintenance. Even on her remarriage she can continue to keep such payment. She doesn't have to prove that she is unable to maintain herself. These are specific advantages that the

divorced muslim wife now has under the Act. The purported purpose was undoubtedly to recognise greater rights which they were said to have under their personal laws. The language of Section 3 of the Act does not at all admit or tolerate the contention that the liability of the husband is in any way dependent on the liability of husbands who had earlier divorced the woman. Her right, the language of Section 3(1)(a) of the Act makes it clear that, is that her husband (I mean the divorced husband) must make reasonable and fair provision for her within the period of Iddat. The precedents have made it clear that this is not merely maintenance for the 3 months immediately following the divorce. The former husband must make a reasonable and fair provision in favour of his divorced wife for her future. This must be done during the period of Iddat.

7. The law has only stated that a reasonable and fair provision must be made by the husband in favour of his divorced wife. The quantum or the period for which such provision is to be made is not mentioned by the statutory provision. The Courts have tried to understand and interpret the expression “reasonable and fair provision” from the language used in Section 3 of the Act and the context in which the statutory provision appears as also the circumstances under which the Act was enacted. Precedents are there to show that this obligation of the muslim husband to make fair

and reasonable provision for his divorced wife must be a realistic substitute for the obligation of the husbands belonging to other religions under Section 125 Cr.P.C. It could not in any way be qualitatively different or lesser than the rights which the muslim divorced women were entitled to get under Section 125 Cr.P.C prior to the Act. If that were not the situation, certainly the Act would not have passed the test of constitutionality under Articles 14 & 15 of the Constitution. It is in this context that courts made endeavours to ascertain the principles under which the reasonable and fair provision to be made can be computed. I repeat that the statute does not at all mention the period for which provision has to be made or what the quantum of reasonable and fair provision which should be made by the husband has to be. In an attempt to ascertain such quantum, the courts looked into the totality of circumstances and the relevant concerns and came to the conclusion that the reasonable and fair provisions and maintenance to be made and paid to the divorced woman by her husband must essentially discharge the duty, not arithmetically but reasonably, which he otherwise had under Section 125 Cr.P.C prior to the enactment of the Act.

8. So construed, observations in the precedents that the quantification under Section 3(1)(a) of the Act must take into account the reality that the wife deserves to be supported till the date of her death or till the date of remarriage have got to be understood

realistically. It is trite that the amount to be paid is not the exact equivalent of the total amount which the divorced women would have been entitled to receive if she continued to remain unmarried till the date of her death. Reasonable speculations have to be resorted to. The probable period for which she would live or would live unmarried will have to be realistically considered. In these circumstances the quantum which the previous husband may have paid cannot ever be held to be sufficient to support the wife till her death as to render unsustainable the claim of the wife under Section 3 (1)(a)of the Act from her subsequent husband who divorces her. Such a construction according to me, would be myopic and would be in derogation of the lofty idealism which prompted the legislature to incorporate such stipulations in favour of the divorced Muslim Women. The obligation to make reasonable and fair provision rests on the shoulders of every husband who divorces his wife. Such liability of his does not vanish and is not obliterated by the mere fact that the previous husband had discharged his duty under Section 3 of the Act. In short, even though the probable period of remaining life or life without remarriage may have weighed with the persons/courts while making/fixing the fair and reasonable provision in respect of the prior divorces, such payments can never be held to be sufficient to justify any contention by the subsequent husbands for absolution or reduction of liability when they divorce the same woman. Every

husband at the time of divorce must independently make reasonable and fair provision. The provisions made by her prior husbands may enable the Court to ascertain her financial status at the time of marriage and divorce but cannot certainly deliver any advantage to the person who later marries and divorces her. It is not the law that the woman should be unable to maintain herself to claim the fair and reasonable provision under Section 3(1)(a) of the Act. Hence the fact that provision has been made at the time of the previous divorce would become irrelevant.

9. According to me a safe rule of practical pragmatism can be followed. In every case where the woman actually remarries, the amount paid by way of fair and reasonable provision under Section 3 (1)(a) of the Act by her former husband must be held to be sufficient provision for her till remarriage only and not till the end of her life. When she remarries, the subsequent husband cannot be heard to contend that the former husband has already made provision for the wife till the end of her life. Such provision already made, can after remarriage, be deemed and reckoned as provision till the date of such remarriage only. That approach would be safe, sound and reasonable as the quantum is fixed taking into account the possibility of remarriage also, though the possibility of the woman remaining unmarried may also have been a relevant input. In **Abdul Hameed v. Fousiya** [2004(3) KLT 1049] a Division Bench of this Court has

considered the relevancy of the date of remarriage while attempting to quantify the amount payable under Section 3(1) (a) of the Act. It has only a limited impact, it was held. But it certainly is a relevant input. So in a case of remarriage such an assumption can be safely made.

10. About the quantum, at this third tier of litigation, invoking the extraordinary inherent jurisdiction available to this Court, I find absolutely no reason to interfere with the impugned direction. That concurrent direction, that the wife is entitled for an amount of Rs.1,000/- per mensem as maintenance during the period of Iddat and the modified conclusion that she is entitled for an amount of Rs.30,000/- as fair and reasonable provision, do not according to me, warrant interference invoking the powers under Section 482 Cr.P.C.

10. In this view of the matter, the contention raised by the learned counsel for the petitioner cannot be accepted. The challenge must fail.

11. In the result, this Crl.M.C is, dismissed.

(R.BASANT, JUDGE)

rtr/-